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Turkey: Website Requirements for Companies Subject to Independent Audit

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I. Introduction and Scope

Pursuant to Article 1524 of the Turkish Commercial Code (“TCC”) which was enacted in 2012, companies that are subject to independent audit are required to not only set up a website, which then will be registered to the trade registry and announced in the trade registry gazette, but also allocate a certain tab of their website for the necessary announcements required by law, within three months following the registry and announcement of their incorporation. Accordingly, Regulation on the Websites to be Established by Stock Corporations (“**Regulation**”) was enacted in 2013, to stipulate the principles and procedures regarding the website requirement.

It is significant to determine which capital companies are subject to independent audit to properly outline the scope and extent of the website requirement. As per the Decision on Determination of Companies Subject to Independent Audit numbered 2018/11597, capital companies which exceed at least two of the below-specified thresholds for two succeeding financial years are subject to independent audit following the commencement of the next financial year:

- Companies with net assets corresponding to at least TRY 35 million,
- Companies with net annual sales revenue of at least TRY 70 million and
- Companies with at least 175 employees in total

That being said, different thresholds and criteria are stipulated for companies subject to different regulated sector legislations such as banks, insurance companies, publicly listed companies subject to the Turkish Capital Markets Law, companies whose 25% of share capital is owned by POOs, non-profits (which include foundations and unions) and cooperatives.

II. Fulfilment of the Obligation

The Regulation stipulates rather extensive and technical necessities regarding the content and set up of the websites, which entail the assistance of duly authorized central database

providers (“CDSPs”), although it is possible for the companies to establish the website by their own means.

Whether the companies opt to use the services provided by CDSPs or establish and operate their own websites, the following technical requirements should be fulfilled to avoid non-compliance:

- A link on the official website with unrestricted accessibility for “Information Society Services” should be provided to ensure easy access to the public,
- Each of the content published thereunder should include the date and link namely “directed message” in brackets,
- Electronic signature and timestamp should be used for publishing, amending and renovating the content posted on the site,
- Companies (in conjunction with the CDSPs, if used) are obliged to have minimum storage and disaster recovery plans as well as necessary network and system security against unauthorized access and attacks due to the activities performed in accordance with the Regulation,
- The secure electronic signatures used for the creation and amendment of the content should be manufactured in line with the relevant legislation,
- Accessibility, integrity, security, irreversibility and undeniable position of the minimum content of the website stipulated under the relevant legislation should be ensured by the Companies (as well as the CDSPs, if used) and,
- The content published thereunder should be electronically archived for 5 (five) years via the use of a secure electronic signature and timestamp.

Obviously, there exists additional technical preconditions and requirements stipulated through technical criteria handbooks issued by Public Certification Centre but the general liabilities which can be easily monitored are mainly as the foregoing.

III. Content of the Website

In addition to the technical requirements, the Regulation also stipulates the scope of the permanent content of the website and the content to be published for a minimum period of 6 (six) months.

The permanent content of the website should include the following information:

- The company’s central registration number (MERSIS number), trade name, address of the headquarters, subscribed and paid capital,
- Full names of the board members in joint stock companies and directors in limited liability companies,
- MERSIS number, trade name, address of the headquarters and details of the legal entity director or board member (provided that a legal entity is appointed as a director or a board member) as well as the registration of the legal entity’s real person representative, and

- Full names or titles, address or headquarters and registered branch offices of the appointed independent auditors.

Any changes to the foregoing content should also be published at the website on the date of change pursuant to the same article of the Regulation. *In addition to the foregoing, some examples of the content that should be published on the website for a minimum period of 6 (six) months are as follows:*

- Merger agreements, merger reports, financial statements and activity reports of the last 3 (three years) and interim financial statements should be published within 30 (thirty) days prior to the relevant General Assembly Resolution,
- Termination filings against the companies, within 5 (five) days upon their publication on the trade registry gazette,
- Finalized termination decision of the companies, within 5 (five) days upon their publication on the trade registry gazette,
- Announcements for the General Assembly Meetings, prior to their publication on the Trade Registry Gazette or on the publication date at the latest,
- Adjournment of the General Assembly Meetings regarding the negotiations on the financial statements and related issues, within 5 (five) days following the resolution on adjournment,
- Resolution minutes of the General Assembly Meetings and Special Committee Meetings of the Privileged Shareholders, within 5 (five) days following the meeting dates,
- Announcements regarding the representatives of corporate bodies, independent representatives and corporate representatives, on the day of their publication,
- Lawsuits regarding the cancellation and nullity of general assembly decisions and their hearing dates, within 5 (five) days at the latest as of the announcement date to be made in accordance with the articles association of the company,
- Finalized court decisions regarding cancellation and nullity of general assembly decisions, within 5 (five) days at the latest as of registration date,
- General assembly resolutions regarding the amendment of the articles of association of the company, within 5 (five) days at the latest as of publication date on trade registry gazette.
- The acquisition of the company shares within the threshold levels stated under Article 198 of the TCC or selling outs, within 5 (five) days at the latest as of the date of the relevant acquisition or selling,
- The dominance agreements executed between companies, within 5 (five) days at the latest as of publication date on the trade registry gazette,
- Board of directors' resolutions (or general assembly resolutions for limited liability companies) regarding authorized signatories and scope of their signature authorities, within 5 (five) days at the latest as of publication date of the board of directors resolutions on the trade registry gazette.
- Internal directives including the working procedures and principles of the general assembly in joint stock companies, within 5 (five) days as of publication date

The foregoing is not the full list as provided under the Regulation and companies are recommended to check and review the Regulation each time they will enter into a corporate transaction, in order to avoid violation.

IV. Sanctions for Non-Compliance

Pursuant to Article 1524 of the TCC, sanctions for non-compliance are stipulated under a two-pillar structure consisting of legal and criminal liabilities of the board members.

Legal Sanctions

The failure to publish the necessary announcements on the website within the terms stipulated under the Regulation and the TCC is deemed as legitimate grounds for the annulment of the relevant general assembly or board of directors' resolution. Additionally, members of the board of directors will be held liable for breach of duty and/or negligence.

That being said, the uniform precedents of the Turkish Court of Cassation¹ state that further evidence proving the effect of failure to duly announce the resolution needs to be submitted in order for the annulment of the decision and that the sole failure to fulfil the website announcement requirement in and of itself would not constitute legitimate grounds for annulment. Consequently, the actual implementation of the legal sanctions is construed in a restricted manner and the sanctions remain as deterrent measures at the most.

Criminal Sanctions

Pursuant to Article 562 of the TCC, a judicial fine of one hundred (100) to three hundred (300) days may be imposed on the members of the board of directors and a judicial fine of up to 100 (one hundred) days may be imposed on the perpetrators failing to insert the necessary content on the websites. Daily value per day would be determined by the courts. Maximum daily rate is TRY 100 (~ EUR 6) and the minimum daily amount is TRY 20 (~ EUR 1). Therefore the judicial fine may be between the range of TRY 2,000 (~ EUR 110) – TRY 30,000 (~ EUR 1,620).

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¹ Decision numbered 2020/4755 and dated 05.11.2020 of the 11th Chamber of Turkish Court of Cassation.